



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 11 OF 2011

IN THE MATTER: ARTICLE 40 CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES 2006, AND THE MATTER OF REGISTERED LAND ACT, CAP 300

AND

IN THE MATTER OF: PURPORTED REVOCATION OF THE TITLE DEED PLOT NO. MOMBASA/BLOCKXXVI/933

BETWEEN

GILBERT MWANGI NJUGUNA.....PETITIONER

AND

1. LAND REGISTRAR MOMBASA.....RESPONDENT

2. MINISTRY OF LANDS.....RESPONDENT

3. HON. ATTORNEY-GENERAL.....RESPONDENT

JUDGMENT

1. In his Petition dated 3rd March, 2011 and filed on 9th March, 2011, the Petitioner, Gilbert Mwangi Njuguna sought three orders -

(1) A declaration that the leasehold interest on that plot of land known as MOMBASA/BLOCK/XXVI/933, for a term of 99 years from 1/01/1998 belongs to the Petitioner and that the purported revocation by the Respondents of the registration thereof through Gazette Notice No. 15573 dated 26th November, 2010 is a nullity ab initio and is of no legal effect.

(2) A conservatory order to be issued restraining the Respondents from ever interfering with the registration of the aforesaid suit property or the rights of occupation thereof currently enjoyed by the Petitioner unless the same be backed by the order issued by a court of competent jurisdiction.

(3) Costs of the petition to be paid by the Respondents.

2. The Petition was supported by the Verifying Affidavit of the Petitioner sworn on 3rd March, 2011, and attached to the Petition, and the Petitioner's counsel's submissions dated 6th April, 2016 together with the authorities referred to therein.

3. The Petition was however opposed by the Respondent through written submissions of counsel for the Respondents dated 17th March, 2016.

4. The Petition herein is purportedly brought under Article 40 of the Constitution of Kenya 2010. Article 40 in the relevant part says –

“40(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

- a. **of any description; and**
- b. **in any part of Kenya.**

(2)

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

- a. **and (b) (set out the conditions for such deprivation under Chapter Five of the Constitution or public purpose, or subject to payment in full, of just compensation).**

(4) – (5)

(6) The rights under this Article do not extend to any property that has been found to have been acquired unlawfully.”

5. I have considered carefully the Petition herein, the Petitioner's Affidavit in support including the Affidavit in support of the Chamber Summons dated 3rd March, 2011 for temporary orders. In my view, the Petition should fail because it seeks to protect a right which is subject to challenge before another court being Mombasa HCCC No. 184 of 2010 by Kenya Anti-Corruption Commission, the predecessor of the Ethics and Anti-Corruption Commission against the Petitioner and one Wilson Gachanja praying for revocation of the registration of the Petitioner as the leasehold proprietor of the suit property known as Mombasa/Block/XXVI/933 (the property).

6. It would defeat and this court would be acting against the larger public interest and would perpetuate abuse of court process if it granted the declarations sought in the Petition while a suit challenging the validity of that title is pending.

7. Besides, this is one of those cases which strictly fall under the provisions of Article 165(5) of the Constitution and of which this court has no jurisdiction.

8. For those reasons the Petition herein dated 3rd March, 2011 has no merit and is dismissed with costs to the Respondents.

Dated, Signed and Delivered in Mombasa this 13th day of May, 2016.

M. J. ANYARA EMUKULE, MBS

JUDGE

In the presence of:

Mr. Kariuki holding brief Mr. Wachenye for Petitioner

Mr. Muketo for Respondent

Mr. S. Kaunda Court Assistant